

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 24-1248

BY REPRESENTATIVE(S) Snyder and Soper, Bird, Clifford, Frizell, Lieder, Lindsay, Marshall, McCluskie;
also SENATOR(S) Gardner, Ginal, Gonzales, Kolker, Lundeen, Priola, Rich, Roberts, Smallwood.

CONCERNING THE "UNIFORM NON-TESTAMENTARY ELECTRONIC ESTATE PLANNING DOCUMENTS ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 24 to title 15 as follows:

ARTICLE 24
Uniform Non-Testamentary Electronic Estate Planning Documents Act
PART 1
GENERAL PROVISIONS AND DEFINITIONS

15-24-101. Short title. THIS ARTICLE 24 MAY BE CITED AS THE "UNIFORM NON-TESTAMENTARY ELECTRONIC ESTATE PLANNING DOCUMENTS ACT".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

15-24-102. Definitions. IN THIS ARTICLE 24:

(1) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(2) "ELECTRONIC RECORD" MEANS A RECORD CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC MEANS.

(3) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SYMBOL OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE RECORD.

(4) "INFORMATION" INCLUDES DATA, TEXT, IMAGES, CODES, COMPUTER PROGRAMS, SOFTWARE, AND DATABASES.

(5) "NON-TESTAMENTARY ESTATE PLANNING DOCUMENT" MEANS A RECORD RELATING TO ESTATE PLANNING THAT IS READABLE AS TEXT AT THE TIME OF SIGNING AND IS NOT A WILL OR CONTAINED IN A WILL. THE TERM:

(a) IN THIS ARTICLE 24, IS LIMITED TO A RECORD THAT CREATES, EXERCISES, MODIFIES, RELEASES, OR REVOKES:

(I) A TRUST INSTRUMENT;

(II) A TRUST POWER THAT UNDER THE TERMS OF THE TRUST REQUIRES A SIGNED RECORD;

(III) A CERTIFICATION OF A TRUST PURSUANT TO SECTION 15-5-1013;

(IV) A POWER OF ATTORNEY THAT IS DURABLE PURSUANT TO THE "UNIFORM POWER OF ATTORNEY ACT", PART 7 OF ARTICLE 14 OF THIS TITLE 15;

(V) AN AGENT'S CERTIFICATION PURSUANT TO SECTION 15-14-719 OF THE VALIDITY OF A POWER OF ATTORNEY AND THE AGENT'S AUTHORITY;

(VI) A POWER OF APPOINTMENT;

(VII) AN ADVANCE DIRECTIVE, INCLUDING A HEALTH-CARE POWER OF ATTORNEY, DIRECTIVE TO PHYSICIANS, NATURAL DEATH STATEMENT, LIVING WILL, AND MEDICAL OR PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT;

(VIII) A RECORD DIRECTING DISPOSITION OF AN INDIVIDUAL'S BODY AFTER DEATH;

(IX) A NOMINATION OF A GUARDIAN FOR THE SIGNING INDIVIDUAL;

(X) A NOMINATION OF A GUARDIAN FOR A MINOR CHILD OR DISABLED ADULT CHILD;

(XI) A MENTAL HEALTH TREATMENT DECLARATION;

(XII) A DISCLAIMER PURSUANT TO THE "UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT", PART 12 OF ARTICLE 11 OF THIS TITLE 15; AND

(XIII) A SEPARATE WRITING OR MEMORANDUM PURSUANT TO SECTION 15-11-513;

(b) EXCLUDES ALL OTHER NON-TESTAMENTARY ESTATE PLANNING DOCUMENTS, INCLUDING:

(I) A DEED OF REAL PROPERTY, INCLUDING A BENEFICIARY DEED PURSUANT TO PART 4 OF ARTICLE 15 OF THIS TITLE 15;

(II) A CERTIFICATE OF TITLE FOR A MOTOR VEHICLE, WATERCRAFT, OR AIRCRAFT; AND

(III) SUBJECT TO SECTION 15-24-201 (2)(b)(III), ANY RECORD OF A MULTIPLE-PARTY AGREEMENT OR OTHER CONTRACTUAL ARRANGEMENT NOT IDENTIFIED IN SUBSECTION (5)(a) OF THIS SECTION.

(6) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT ENTITY, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER LEGAL ENTITY.

(7) "POWER OF ATTORNEY" MEANS A RECORD THAT GRANTS AUTHORITY TO AN AGENT TO ACT IN PLACE OF THE PRINCIPAL, EVEN IF THE

TERM IS NOT USED IN THE RECORD.

(8) "RECORD" MEANS INFORMATION:

(a) INSCRIBED ON A TANGIBLE MEDIUM; OR

(b) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN PERCEIVABLE FORM.

(9) "SECURITY PROCEDURE" MEANS A PROCEDURE TO VERIFY THAT AN ELECTRONIC SIGNATURE, RECORD, OR PERFORMANCE IS THAT OF A SPECIFIC PERSON OR TO DETECT A CHANGE OR ERROR IN AN ELECTRONIC RECORD. THE TERM INCLUDES A PROCEDURE THAT USES AN ALGORITHM, CODE, IDENTIFYING WORD OR NUMBER, ENCRYPTION, OR CALLBACK OR OTHER ACKNOWLEDGMENT PROCEDURE.

(10) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, THAT CREATES OR CONTRIBUTES PROPERTY TO A TRUST.

(11) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD:

(a) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(b) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SIGNATURE.

(12) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR OTHER TERRITORY OR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY RECOGNIZED INDIAN TRIBE.

(13) "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING A TRUST'S PROVISIONS AS:

(a) EXPRESSED IN THE TRUST INSTRUMENT; OR

(b) MAY BE ESTABLISHED BY OTHER EVIDENCE IN A JUDICIAL PROCEEDING OR IN A NONJUDICIAL SETTLEMENT AGREEMENT PURSUANT TO

SECTION 15-5-111 OR BY ALTERNATE DISPUTE RESOLUTION PURSUANT TO SECTION 15-5-113.

(14) "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS.

(15) "WILL" INCLUDES A CODICIL AND A TESTAMENTARY INSTRUMENT THAT MERELY APPOINTS AN EXECUTOR, REVOKES OR REVISES ANOTHER WILL, NOMINATES A GUARDIAN, OR EXPRESSLY EXCLUDES OR LIMITS THE RIGHT OF AN INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF THE DECEDENT PASSING BY INTESTATE SUCCESSION.

15-24-103. Construction. (1) THIS ARTICLE 24 IS DESIGNED TO AUTHORIZE ESTATE PLANNING DOCUMENTS TO BE IN ELECTRONIC FORM AND ELECTRONICALLY SIGNED. THIS ARTICLE 24 DOES NOT NEGATE OTHER STATE LAW REQUIREMENTS THAT MUST BE SATISFIED TO VALIDATE A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT. ACCORDINGLY, THIS ARTICLE 24 MUST BE CONSTRUED AND APPLIED TO:

(a) FACILITATE THE CREATION OF NON-TESTAMENTARY ESTATE PLANNING DOCUMENTS IN ELECTRONIC FORM AND THE ELECTRONIC SIGNING OF SUCH DOCUMENTS; AND

(b) BE CONSISTENT WITH REASONABLE PRACTICES CONCERNING ELECTRONIC DOCUMENTS AND SIGNATURES AND CONTINUED EXPANSION OF THOSE PRACTICES.

PART 2
ELECTRONIC NON-TESTAMENTARY
ESTATE PLANNING DOCUMENTS

15-24-201. Scope. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS ARTICLE 24 APPLIES TO AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT AND AN ELECTRONIC SIGNATURE ON A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT.

(2) (a) THIS ARTICLE 24 DOES NOT APPLY TO A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT IF THE DOCUMENT PRECLUDES USE OF AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE.

(b) THIS ARTICLE 24 DOES NOT AFFECT THE VALIDITY OF AN ELECTRONIC RECORD OR ELECTRONIC SIGNATURE THAT IS VALID PURSUANT TO THE:

(I) "UNIFORM ELECTRONIC TRANSACTIONS ACT", ARTICLE 71.3 OF TITLE 24;

(II) "UNIFORM ELECTRONIC WILLS ACT", PART 13 OF ARTICLE 11 OF THIS TITLE 15; OR

(III) TERMS OF A RECORD THAT EVIDENCES AN AGREEMENT OR OTHER ARRANGEMENT GOVERNING THE TRANSFER OF PROPERTY AT A PARTY'S DEATH.

15-24-202. Principles of law and equity. THE LAW OF THIS STATE AND PRINCIPLES OF EQUITY APPLICABLE TO A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT APPLY TO AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT EXCEPT AS MODIFIED BY THIS ARTICLE 24.

15-24-203. Use of electronic record or signature not required.

(1) THIS ARTICLE 24 DOES NOT REQUIRE A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT OR SIGNATURE ON A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT TO BE CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED, STORED, OR OTHERWISE PROCESSED OR USED BY ELECTRONIC MEANS OR IN ELECTRONIC FORM.

(2) A PERSON IS NOT REQUIRED TO HAVE A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT IN ELECTRONIC FORM OR SIGNED ELECTRONICALLY EVEN IF THE PERSON PREVIOUSLY CREATED OR SIGNED A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT BY ELECTRONIC MEANS.

(3) A PERSON MAY NOT WAIVE THE PROVISIONS OF THIS SECTION.

15-24-204. Recognition of electronic non-testamentary estate planning document and electronic signature. (1) A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT OR A SIGNATURE ON A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT MAY NOT BE DENIED LEGAL EFFECT OR ENFORCEABILITY SOLELY BECAUSE IT IS IN ELECTRONIC FORM.

(2) IF ANOTHER LAW OF THIS STATE REQUIRES A

NON-TESTAMENTARY ESTATE PLANNING DOCUMENT TO BE IN WRITING, AN ELECTRONIC RECORD OF THE DOCUMENT SATISFIES THE REQUIREMENT.

(3) IF ANOTHER LAW OF THIS STATE REQUIRES A SIGNATURE ON A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT, AN ELECTRONIC SIGNATURE SATISFIES THE REQUIREMENT.

15-24-205. Attribution and effect of electronic record and electronic signature. (1) AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT OR ELECTRONIC SIGNATURE ON AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT IS ATTRIBUTABLE TO A PERSON IF IT WAS THE ACT OF THE PERSON. THE ACT OF THE PERSON MAY BE SHOWN IN ANY MANNER, INCLUDING BY SHOWING THE EFFICACY OF A SECURITY PROCEDURE APPLIED TO DETERMINE THE PERSON TO WHICH THE ELECTRONIC RECORD OR ELECTRONIC SIGNATURE WAS ATTRIBUTABLE.

(2) THE EFFECT OF ATTRIBUTION TO A PERSON PURSUANT TO SUBSECTION (1) OF THIS SECTION OF A DOCUMENT OR SIGNATURE IS DETERMINED FROM THE CONTEXT AND SURROUNDING CIRCUMSTANCES AT THE TIME OF ITS CREATION, EXECUTION, OR ADOPTION AND AS PROVIDED BY OTHER LAW.

15-24-206. Notarization and acknowledgment. IF ANOTHER LAW OF THIS STATE REQUIRES A SIGNATURE OR RECORD TO BE NOTARIZED, ACKNOWLEDGED, VERIFIED, OR MADE UNDER OATH, THE REQUIREMENT IS SATISFIED WITH RESPECT TO AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT IF AN INDIVIDUAL AUTHORIZED TO PERFORM THE NOTARIZATION, ACKNOWLEDGMENT, VERIFICATION, OR OATH ATTACHES OR LOGICALLY ASSOCIATES THE INDIVIDUAL'S ELECTRONIC SIGNATURE ON THE DOCUMENT TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO BE INCLUDED UNDER THE OTHER LAW.

15-24-207. Witnessing and attestation. IF ANOTHER LAW OF THIS STATE BASES THE VALIDITY OF A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT ON WHETHER IT IS SIGNED, WITNESSED, OR ATTESTED BY ANOTHER INDIVIDUAL, THE SIGNATURE, WITNESSING, OR ATTESTATION OF THAT INDIVIDUAL MAY BE ELECTRONIC.

15-24-208. Retention of electronic record - original. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF ANOTHER LAW OF THIS

STATE REQUIRES AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT TO BE RETAINED, TRANSMITTED, COPIED, OR FILED, THE REQUIREMENT IS SATISFIED BY RETAINING, TRANSMITTING, COPYING, OR FILING AN ELECTRONIC RECORD THAT:

(a) ACCURATELY REFLECTS THE INFORMATION IN THE DOCUMENT AFTER IT WAS FIRST GENERATED IN FINAL FORM AS AN ELECTRONIC RECORD OR PURSUANT TO SECTION 15-24-209; AND

(b) REMAINS ACCESSIBLE TO THE EXTENT REQUIRED BY THE OTHER LAW.

(2) A REQUIREMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION TO RETAIN A RECORD DOES NOT APPLY TO INFORMATION THE SOLE PURPOSE OF WHICH IS TO ENABLE THE RECORD TO BE SENT, COMMUNICATED, OR RECEIVED.

(3) A PERSON MAY SATISFY SUBSECTION (1) OF THIS SECTION BY USING THE SERVICES OF ANOTHER PERSON.

(4) IF ANOTHER LAW OF THIS STATE REQUIRES A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT TO BE PRESENTED OR RETAINED IN ITS ORIGINAL FORM, OR PROVIDES CONSEQUENCES IF A NON-TESTAMENTARY ESTATE PLANNING DOCUMENT IS NOT PRESENTED OR RETAINED IN ITS ORIGINAL FORM, AN ELECTRONIC RECORD RETAINED IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION SATISFIES THE OTHER LAW.

(5) THIS SECTION DOES NOT PRECLUDE A GOVERNMENTAL AGENCY FROM SPECIFYING REQUIREMENTS FOR THE RETENTION OF A RECORD SUBJECT TO THE AGENCY'S JURISDICTION IN ADDITION TO THOSE IN THIS SECTION. IN THIS SECTION, "GOVERNMENTAL AGENCY" MEANS AN EXECUTIVE, LEGISLATIVE, OR JUDICIAL AGENCY, DEPARTMENT, BOARD, COMMISSION, AUTHORITY, INSTITUTION, OR INSTRUMENTALITY OF THE FEDERAL GOVERNMENT OR OF A STATE OR OF A COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF A STATE.

15-24-209. Certification of paper copy. AN INDIVIDUAL MAY CREATE A CERTIFIED PAPER COPY OF AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT BY AFFIRMING UNDER PENALTY OF PERJURY

THAT THE PAPER COPY IS A COMPLETE AND ACCURATE COPY OF THE DOCUMENT.

15-24-210. Admissibility in evidence. EVIDENCE RELATING TO AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT OR AN ELECTRONIC SIGNATURE ON THE DOCUMENT MAY NOT BE EXCLUDED IN A PROCEEDING SOLELY BECAUSE IT IS IN ELECTRONIC FORM.

15-24-211. Protection of persons without knowledge of non-testamentary estate planning documents. IF A PERSON ACTING IN GOOD FAITH HAS NO ACTUAL KNOWLEDGE OF AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT, THEN THE PERSON IS NOT LIABLE FOR ACTS PERFORMED IN GOOD FAITH AND MAY PRESUME THAT THE DOCUMENT DOES NOT EXIST.

PART 3

(Reserved)

PART 4

MISCELLANEOUS PROVISIONS

15-24-401. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS UNIFORM ACT, A COURT SHALL CONSIDER THE PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT ENACT IT.

15-24-402. Relation to electronic signatures in global and national commerce act. THIS ARTICLE 24 MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., AS AMENDED, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE 15 U.S.C. SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN 15 U.S.C. SECTION 7003(b).

15-24-403. Transitional provision. (1) THIS ARTICLE 24 APPLIES TO AN ELECTRONIC NON-TESTAMENTARY ESTATE PLANNING DOCUMENT CREATED, SIGNED, GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 24.

(2) THIS ARTICLE 24 APPLIES TO THE WILL OF A DECEDENT WHO DIES ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 24.

SECTION 2. Act subject to petition - effective date. This act takes effect January 1, 2025; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

